



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 16816776

Date: MAY 24, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Director of the Nebraska Service Center denied the petition and dismissed the Petitioner's following, combined motions to reopen and reconsider. We dismissed the company's appeal and its second round of combined motions to reopen and reconsider. *See In Re: 10343862* (AAO Oct. 1, 2020). The matter is before us again on the Petitioner's motion to reconsider. Upon review, we will dismiss the motion as untimely.

**I. THE MOTION'S UNTIMELINESS AND NATURE**

The Petitioner acknowledges that its motion is untimely. Under special rules that U.S. Citizenship and Immigration Services (USCIS) implemented during the current, COVID-19 pandemic, a petitioner may generally file a motion up to 63 days after the issuance of a mailed decision. USCIS Alert, "USCIS Extends Flexibility for Responding to Agency Requests," (Mar. 24, 2021), <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-4> (last visited May 20, 2021); *see also* 8 C.F.R. § 103.8(b) (adding three days to filing deadlines if USCIS serves decisions or notices by mail). The Petitioner's filing arrived 75 days after we mailed our dismissals of the company's prior motions.

Counsel states that, about a week before the motion's deadline, she:

tested positive for covid-19 and ha[s] been unable to work. As a solo practitioner, I did not have an attorney able to file cases during my temporary quarantine and recovery period. As late as December 4th[, 2020, a day after the motion's filing deadline,] I was still testing positive for covid-19.

Under these circumstances, the Petitioner asks us to excuse the motion's untimely filing. As proof of counsel's COVID-19 diagnosis, the company submits a letter from a government health department.

We may excuse the untimely filing of a motion to reopen "where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner." 8 C.F.R. § 103.5(a)(1). Department of Homeland Security (DHS) regulations, however, do not similarly authorize us to excuse the untimely filing of a motion to reconsider.

Pursuant to requirements for motions to reopen, the Petitioner's filing states new facts supported by documentary evidence. *See* 8 C.F.R. § 103.5(a)(2). But a petitioner must file each benefit request according to form instructions, which are incorporated into DHS regulations. 8 C.F.R. § 103.2(a)(1). USCIS must dismiss "[a] motion that does not meet applicable requirements." 8 C.F.R. § 103.5(a)(4).

The instructions to Form I-290B, Notice of Appeal or Motion, required the Petitioner to indicate its filing of an appeal or a motion and, if a motion, to indicate which type of motion. The instructions stated requirements for both motions to reopen and reconsider and cited the applicable regulations at 8 C.F.R. §§ 103.5(a)(2), (3).<sup>1</sup> *See* USCIS, "Instructions for Notice of Appeal or Motion," 4-6, <https://www.uscis.gov/sites/default/files/document/forms/i-290binstr.pdf> (last visited May 20, 2021). In part 2 of Form I-290B, the Petitioner checked the box indicating its filing of a "motion to reconsider." The accompanying, written brief also describes the filing as a "motion to reconsider."

Applicants and petitioners may not make material changes to benefit requests after their filings. *See* 8 C.F.R. § 103.2(b)(1) (requiring an applicant or petitioner to establish eligibility for a requested benefit "at the time of filing the benefit request" and continuing throughout its adjudication). Thus, USCIS generally limits amendments on benefit-request forms to corrections of clerical errors. *See, e.g.,* USCIS, *Petition Filing and Processing Procedures for Form I-140*, "Requesting or Changing Visa Categories," <https://www.uscis.gov/forms/petition-filing-and-processing-procedures-for-form-i-140-immigrant-petition-for-alien-worker#Requesting> (last visited May 20, 2021) (stating that "you may request that we change the visa classification to correct a clerical error"). The Petitioner must establish eligibility for a requested benefit by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). The company has not demonstrated that its designation of the filing as a motion to reconsider resulted from clerical error. We will therefore treat the Petitioner's filing as a motion to reconsider.

## II. CONCLUSION

We lack authority to excuse the motion's untimely filing. Thus, the motion does not meet applicable requirements. We must therefore dismiss it.

**ORDER:** The motion to reconsider is dismissed.

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<sup>1</sup> The form also allowed the Petitioner to file a combined motion to reopen and motion to reopen.